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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

BRENT MOSCHETTI,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Case No.

COMPLAINT

Personal Injury Action – Negligence – 28
U.S.C. §2674; 28 U.S.C. §1346

Plaintiff ("BRENT MOSCHETTI") alleges:

JURISDICTION

1.

The claims asserted herein arise under Oregon Common Law Negligence. This Court has original jurisdiction over this controversy pursuant to 28 U.S.C. §2674 (the United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances) and 28 U.S.C. §1346(b) (civil actions on claims against the United States, for money damages for personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private

person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred).

2.

Proper venue for this action is in the United States District Court for the District of Oregon pursuant to 28 U.S.C. §1346(b)(1) because a substantial part of the acts or omissions giving rise to the controversy occurred in Oregon.

PARTIES

3.

At all times material, BRENT MOSCHETTI was and is a resident of Madras, Jefferson County, Oregon.

4.

At all times material, Defendant UNITED STATES OF AMERICA was acting by and through the U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION (hereinafter referred to as “the FBI”), and had working for it employees, officers, or agents who, at all times material, were working within the course and scope of their office or employment and were under the control, or right of control, of Defendant. All acts attributed to Defendant as alleged below were performed by and through said persons.

5.

Defendant has been given proper and timely notice of this claim for damages pursuant to 28 USC, Chapter 171. Said notice was made within two years after the date of injury.

6.

Defendant responded to the notice of this claim by letter dated June 23, 2020 that it denies liability for the same. Filing of this action is therefore timely, pursuant to 28 U.S.C. § 2675(a).

CLAIM FOR RELIEF

(Negligence)

7.

At all times material, a gentleman known by the name of Mark R. Procopio was an employee or agent of the FBI (hereinafter referred to as “Defendant’s agent”).

8.

At all times material, Defendant’s agent was acting within the course and scope of his employment or agency of Defendant.

9.

At all times material, Defendant’s agent was driving a 2018 Ford Explorer SUV.

10.

At all times material, BRENT MOSCHETTI was the operator of a 2006 Harley-Davidson motorcycle.

11.

At all times material, Highway 97 was and is a public road running generally north-south in Madras, Jefferson County, Oregon.

12.

At all times material, NE Chestnut Street was and is a public road running generally east-west in Madras, Jefferson County, Oregon.

13.

At all times material, NE Chestnut Street exists on the east side of Highway 97 and forms a T-intersection with Highway 97.

14.

At all times material, the intersection of NE Chestnut Street and Highway 97 is controlled with a stop sign for eastbound traffic on NE Chestnut Street.

15.

At all times material, northbound traffic on Highway 97 do not have a traffic control device at the intersection of NE Chestnut Street and Highway 97, and therefore has the right of way at that intersection relative to traffic entering the intersection from NE Chestnut Street.

16.

On or about September 10, 2018, at approximately 2:56 p.m., BRENT MOSCHETTI was riding his motorcycle northbound on Highway 97 in Madras, Oregon, behind a CenturyLink service vehicle. At the same time, Defendant's agent was driving his Ford Explorer westbound on NE Chestnut Street in Madras, Oregon. As the CenturyLink service vehicle slowed and made a signaled right turn onto NE Chestnut Street, BRENT MOSCHETTI slowed his motorcycle. After the CenturyLink vehicle exited Highway 97, BRENT MOSCHETTI continued northbound on Highway 97 through the intersection. At the same time, Defendant proceeded from the stop sign at NE Chestnut Street, across the northbound lane of travel of Highway 97, and directly in front of BRENT MOSCHETTI's motorcycle. As a result, BRENT MOSCHETTI did not have time to avoid, or otherwise stop short of Defendant's SUV, causing him to collide into the driver's side of the SUV and be thrown from his motorcycle. Said collision caused BRENT MOSCHETTI's injuries and damages as alleged herein, all of which were reasonably foreseeable.

17.

At all times material, Defendant is vicariously liable for any negligent acts of Defendant's agent as alleged herein.

18.

Defendant's agent was negligent in one or more of the following particulars, each of which created a foreseeable and unreasonable risk of injury to BRENT MOSCHETTI:

- (a) In driving at a speed greater than reasonable and prudent under the circumstances then and there existing (negligence *per se*, ORS 811.100);

- (b) In impeding and/or blocking the normal and reasonable movement of traffic upon Highway 97 (negligence *per se*, ORS 811.130);
- (c) In failing to yield the right of way to BRENT MOSCHETTI's motorcycle while it was in the intersection, or otherwise approaching so close as to constitute an immediate hazard during the time he was moving across or within the intersection (negligence *per se*, ORS 811.260(15); ORS 811.265);
- (d) In entering the intersection when there was not sufficient space to accommodate his vehicle without obstructing the passage of northbound traffic upon Highway 97 (negligence *per se*, ORS 811.290);
- (e) In attempting to turn left onto Highway 97 when said movement could not be made with reasonable safety (negligence *per se*, ORS 811.335);
- (f) In preventing BRENT MOSCHETTI from full use of the northbound lane of Highway 97 (negligence *per se*, ORS 811.385);
- (g) In failing to keep a proper lookout;
- (h) In failing to keep proper control of his vehicle; and
- (i) In failing to drive at a speed that is reasonable and prudent under the circumstances.

19.

At all times material, BRENT MOSCHETTI had a bodily condition of his spine that made him more susceptible to injury than a person in normal health, and he suffered injury as a result of that condition.

20.

As a result of the negligence of Defendant's agent, BRENT MOSCHETTI sustained the following injuries and noneconomic damages, all of which were reasonably foreseeable, and some of which are permanent:

- (a) Damage to the muscles, ligaments, tendons, nerves, and other soft tissue of the legs, right shoulder, chest, and left hand;
- (b) Open displaced fracture of the shaft of the right femur, requiring surgery and resulting in a permanent limp;
- (c) Closed displaced intertrochanteric fracture of the right femur, requiring surgery and resulting in a permanent limp;
- (d) Closed fracture of proximal end of the right fibula;
- (e) Acute blood loss anemia;
- (f) Symptomatic activation of previously asymptomatic degenerative changes in thoracic and lumbar spine;
- (g) Atelectasis;
- (h) Multiple lacerations;
- (i) Multiple abrasions;
- (j) Multiple contusions and bruises;
- (k) Pain, discomfort, and suffering; and
- (l) Inconvenience and interference with usual and everyday activities, apart from gainful employment;

All to BRENT MOSCHETTI's noneconomic damage in an amount determined by the jury to be fair and reasonable, but not to exceed the sum of **\$600,000**.

21.

As a result of the negligence of Defendant's agent, BRENT MOSCHETTI sustained the following economic damages, all of which were reasonably foreseeable:

- (a) Reasonable and necessary medical expenses to date in the approximate sum of **\$148,988.08**;

- (b) Future reasonable and necessary medical, therapeutic, and other health care expenses in an amount to be determined at the time of trial, but for the purposes of giving notice to Defendant, estimated to be **\$25,000**; and
- (c) Property damage in the approximate sum of **\$8,919**;

All to BRENT MOSCHETTI's economic damage in an amount determined by the jury to be fair and reasonable, but not to exceed the sum of **\$182,907.08**.

22.

BRENT MOSCHETTI gives notice that his medical bills incurred to date are slightly higher than that alleged above, on account of having had continued medical care since the date the applicable tort claim notice was filed. However, as this amount is expected to continue to change with time, BRENT MOSCHETTI has used the figures applicable at the time of service of the subject tort claim notice, and plans to amend upward the medical expenses incurred, as well as amend downward the future medical expenses expected, to conform to the proof shortly before trial.

WHEREFORE, Plaintiff BRENT MOSCHETTI prays for relief from the Court as follows:

1. Assume jurisdiction in this matter over Plaintiff BRENT MOSCHETTI's claims;
2. Award Plaintiff BRENT MOSCHETTI judgment against Defendant for noneconomic damage in an amount determined by the jury to be fair and reasonable, but not to exceed the sum of **\$600,000**;
3. Award Plaintiff BRENT MOSCHETTI judgment against Defendant for economic damage in an amount determined by the jury to be fair and reasonable, but not to exceed the sum of **\$182,907.08**;
4. Award Plaintiff BRENT MOSCHETTI his costs and disbursements incurred herein; and
5. Award Plaintiff BRENT MOSCHETTI any other relief the Court deems appropriate.

Dated: July 26, 2020.

DWYER WILLIAMS CHERKOSS
ATTORNEYS, P.C.

By: 

Tim Williams, OSB No. 034940
Attorneys for Plaintiff
Trial Attorney: Same